

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-938

December 22, 2000

BANGOR GAS COMPANY, L.L.C.
Application for Approval of Affiliated
Transaction with Sempra Energy Trading
Company and/or For Waiver or Exemption

ORDER ON BANGOR GAS'S
REQUEST FOR EXEMPTION
UNDER 35-A M.R.S.A.
§ 707(3)(F)

Welch, Chairman; Nugent and Diamond, Commissioners

I. SUMMARY

We grant Bangor Gas Company LLC an exemption, pursuant to 35-A M.R.S.A. §707(3)(F), from the prior approval requirements of section 707 until February 20, 2001, 60 days from the date of this order, by which date we will rule on the pending affiliated transaction application.

II. BACKGROUND

On November 20, 2000, Bangor Gas Company (Bangor Gas or BGC) filed, pursuant to 35-A M.R.S.A. §707, an application for approval of a transaction with its affiliate, Sempra Energy Trading Company (SETC). BGC proposes to enter into a gas supply contract with SETC for the winter gas period, November 1, 2000 through April 30, 2001, under which gas prices would be set according to an index. The agreement was fully executed on November 8, 2000. In its application, Bangor Gas requested expeditious approval, exemption, and/or waiver of the statutory requirements for this gas supply contract but did not request approval by a particular date.

On December 5, 2000, the Hearing Examiner issued a Notice of Proceeding setting an intervention deadline of December 18 and scheduling an initial conference for December 20. Also on December 5, the Hearing Examiner issued a procedural order directing Bangor Gas to provide further information as to when the contract must be effective and to describe the consequences if the contract is not approved, exempted or waived by that date. In addition, the Examiner asked Bangor Gas to identify the statutory basis under which it seeks an exemption or waiver of the requirements of §707 to assist the Commission in evaluating and acting on this request. Bangor Gas provided this information on December 18, 2000.¹

The Office of the Public Advocate (OPA), Maine Natural Gas, LLC (MNG), and Sprague Energy Corporation (Sprague) filed timely petitions to intervene. In addition,

¹ Bangor Gas requested and received an extension of time to file this response and responses to Staff Data Requests, from December 15 until December 19, 2000.

due to scheduling conflicts, Sprague requested that the initial conference set for December 20 be rescheduled. Bangor Gas filed its objection to Sprague's petition to intervene on December 20, 2000. The Maine Oil Dealer's Association (MODA) and counsel for Maritimes and Northeast Pipeline (MNE) requested to be added to the service list as interested persons.

On December 19, 2000, the Hearing Examiner issued a procedural order which contained a ruling on Bangor Gas's request for a section 707(3)(F) exemption and established a partial schedule for the case, including setting the exemption issue for deliberation on December 22, 2000. Exceptions were due on December 21, 2000. OPA filed a letter in support of the Examiner's Recommendation to grant the exemption and also in support of granting Sprague intervention in this proceeding.

III. DISCUSSION AND ANALYSIS

In its letter explaining the basis for its request for expedited treatment and an exemption from the provisions of 35-A M.R.S.A. § 707, Bangor Gas states that it needs authorization to proceed under the contract to allow it to fulfill service obligations occurring this week. Bangor Gas asserts that failure to exempt or approve the gas supply contract will result in higher gas supply costs, borne by ratepayers through higher rates, because it would be required to seek an alternative supplier. Bangor Gas maintains that because Sempra's offer was the lowest, the costs to obtain needed gas from other suppliers will be higher.

Consequently, Bangor Gas requests an exemption pursuant to Section 707(3)(F) to allow it to obtain gas supplies under the contractual arrangement prior to receiving specific approval. Bangor asserts that good cause for this temporary exemption exists because of the nature of the contractual arrangement and the harm to ratepayers that otherwise could occur.

We previously granted a gas utility an exemption from the prior approval requirement of Section 707 under subsection 3(F). See *CMP Natural Gas, LLC, Petition for Approval to Furnish Service in the Municipalities of Westbrook and Gorham, Docket No. 99-477* and *Central Maine Power Company, Request for Approval of Affiliated Interest Transaction, Sale of Assets, Docket No. 99-739*, Order (Part I) (Dec. 3, 1999). In that case, we allowed affiliates to begin limited construction activities subject to certain conditions in the event the pending affiliate arrangements were not ultimately approved. We found that the public interest would be served by facilitating construction of this beneficial project. We sought to ensure that regulatory matters would not adversely impact the developer of a gas-fired electric generation facility, an unrelated third party.

Here we find a similar situation such that if the exemption were not granted, service to potential gas consumers in the Bangor region could be impeded. This result is not in the public interest, so long as other ratepayers are protected from any adverse or unacceptable consequences of the proposed arrangement.

We conclude that there is good cause to allow Bangor Gas to serve customers who seek or require service while our review of this affiliate arrangement is pending. We do not see it as in the public interest to delay or impede the development of the natural gas market in Maine when the statute allows a temporary exemption, where circumstances warrant and where ratepayers can be protected.

Because of Bangor Gas's need to have gas supply available at a stated price in the event customers seek service from Bangor Gas in the coming weeks, we grant Bangor Gas an exemption of the pre-approval requirements of 35-A M.R.S.A. §707, pursuant to Section 707(3)(F). We note, however, that Bangor Gas will be operating at risk of non-recovery of its full gas supply costs in the interim, should the Commission later find this contract not to be in the public interest.

Accordingly, we

O R D E R

1. That Bangor Gas Company LLC be exempted from the provisions of 35-A M.R.S.A. §707, as allowed by subsection (3)(F) thereof, for 60 days, until February 20, 2001.

Dated at Augusta, Maine, this 22nd Day of December, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.